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October 31, 2002

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Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

**NOTICE OF EX PARTE
COMMUNICATION**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On October 30, 2002, Bruce Renard, President of the American Public Communications Council ("APCC") and Albert H. Kramer, Allan C. Hubbard, and Jeffrey H. Tignor of Dickstein Shapiro Morin & Oshinsky, counsel for APCC, met separately Matthew Brill, Acting Senior Legal Advisor to Commissioner Abernathy, Jordan Goldstein, Senior Legal Advisor to Commissioner Copps, and Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin. The matters discussed are detailed in the enclosed documents, copies of which were handed out at the meeting (along with copies of previously filed materials).

Sincerely,

/s/

Jeffrey H. Tignor

Enclosure

cc: Matthew Brill (by e-mail)
Jordan Goldstein (by e-mail)
Daniel Gonzalez (by e-mail)

**American Public Communications Council
Ex Parte Presentation on
Payphone Service “Contributions”
to Universal Service**

October 30, 2002

Who is APCC?

- APCC is a national trade association representing over 1,000 independent (non-LEC) providers of pay telephone equipment, services, and facilities.
- APCC seeks to promote competitive markets and high standards of service for payphones.
- APCC is an active participant in Commission proceedings affecting payphones.

Payphones “Contribute” to Universal Service By Providing a Unique and Vital Form of Universal Service

- Payphones provide the public with affordable, high quality per use “on demand dial-tone” service available 24 x 7 x 365 using a variety of payment media.
- Payphones are used by Americans in all walks of life. Payphones are used not only by people without home phones or wireless phones but by Americans with wireless phones (when those phones cannot function) and by those who need privacy (*e.g.*, for call to domestic abuse shelters).
- Payphone users can place calls, at no charge to the caller, to 800 numbers that provide access to a range of commercial services and to social services agencies. Payphones are free for emergency and TRS calls.

Congressionally Mandated Widespread Deployment of Payphones is Threatened

- In 1996, Congress enacted Section 276 of the Communications Act “to promote the widespread deployment of payphone service.”
- Payphones in growing numbers are being removed from locations where they are still needed but no longer attract sufficient calls to remain economically viable.
- Any increase in the amount that payphone service providers must pay in universal service assessments will accelerate the rate of payphone removal.

Payphone Service Providers' Current Payments to the Universal Service Fund

- Because of the minimal use of payphones for direct-dial long distance calling, payphone service providers (“PSPs”) today pay on average only about \$.35 per line per month in universal service assessments.
- On dial-around calls, the IXC whose customer places the call pays the universal service assessment. These assessments amount to approximately \$300 million per year.

Major Proposals Would Result In Rate Shock

- In its initial Comments, the Coalition for Sustainable Universal Service (CoSUS) stated (footnote 30) that assessments for payphone lines would be imposed upon the LEC provider of the line to the PSP, rather than upon the PSP. The LEC would pass-through the charge (\$3.50 - 4.00) to the PSP.
- According to SBC's August 30, 2002 ex parte, PSPs would be assessed for two qualifying service connections, one for a PSP's connection with a LEC, and the other for the PSP's connection with an interexchange carrier. A PSP would pay \$1.10 under SBC's proposal.

Exponential Increase in Payments

- Assessing payphone connections as tier-1 multi-line business connections at the illustrative connection charge of \$4.00 per line would result in a more than ten-fold increase in PSPs' universal service payments.
- Such an exponential increase in PSPs' monthly universal service payments would significantly accelerate the removal of payphones from locations where they are still needed.

Unlike Other Service Providers, PSPs Have No Rational Means Available to Recover their Universal Service Contributions from End Users

- Requiring PSPs to contribute to the USF is inequitable because PSPs, unlike other service providers, have no rational means to recover contributions from end users. Recovery from the few cost causing end users who make interstate coin calls would greatly suppress demand. Recovery from end users who make local coin calls would burden those who are not the cost causers.
- CoSUS has emphasized that the FCC should not be concerned by varying impacts across telecom sectors because telecom providers paying USF fees will pass on their costs to end users as line item charges. CoSUS overlooks the fact that PSPs do not invoice their end users and have no rational way to pass on costs to end users.

If Required to Pay, Payphone Service Providers Should Be Assessed at a Reasonable Rate

- Payphone service providers should be assessed at a level not higher than that applicable to paging service.
- As with pagers, any payment required for payphone lines should reflect payphone service providers' comparatively small interstate revenues and outbound only calling characteristics.
- Payphone lines have none of the characteristics of multiline service. Under no circumstances, should the proposed tier 1 multiline business connection assessment be applied to payphone service.

PSPs Should Not Be Required to Pay Into the Universal Service Fund

- In order to preserve ready access to the telephone network through payphones, the FCC should altogether exempt PSPs from contributing to the Universal Service Fund.
- PSPs are not “telecommunications carriers” and thus are not mandatory payors under the Communications Act.
- Although CoSUS proposes exempting “public interest payphone” lines, this gesture is meaningless since there are only a few hundred public interest payphones throughout the entire country.



Payphone Service “Contributions” to Universal Service: A Summary

- ♦ **Payphones: a unique and vital form of universal service.** Payphone service “contributes” to universal service by providing the public with high quality “on-demand dial-tone” service which is available 24 x 7 x 365 to all members of the public, for one call or many, and is priced affordably on a per-use basis using a variety of payment media (and free for emergency calls). Users can also place calls, at no charge to the caller, to 800 numbers that provide the full panoply of commercial services and access to public service.
 - Even users of wireless service need ready access to payphones when their wireless phones are out of a service area (such as in many rural areas), lose battery power or otherwise are not available for use. Victims of domestic violence and child abuse (and other callers who do not want a record of the call available to family members) must rely on payphones. Payphones are used by many Americans for local or 800 calls to social service agencies (employment, homeless shelters, social security, etc.).
 - These users of payphone service are found in every strata of society in all neighborhoods and regions of the country. Ready access to payphones is especially critical for the 5.6 million American households without phone service and is vitally important for Americans who do not have wireless service. These Americans rely on ready access to payphones for emergency and important business and personal calls not just where they reside, but also where they shop, visit and work.
 - Numerous community associations and social services organizations such as Community Voice Mail, Rural Housing Inc., The Eastern Band of Cherokee Indians, and The North Carolina Sheriffs’ Association have expressed their support for ready access to payphones. *See Comments of APCC, Appendices A-J.*
- ♦ **Widespread deployment of payphones is mandated by Congress.** In 1996, Congress, recognizing the importance of ready access to payphones, enacted Section 276 of the Communications Act “to promote the widespread deployment of payphone service.”
- ♦ **Widespread deployment is threatened.** For a variety of reasons, including the expansion of wireless, payphones in growing numbers are being removed from locations where they are needed but no longer attract sufficient calls to remain economically viable. Between 1998 and 2002, the number of payphones has decreased by about 500,000 phones, from about 2.2 million to about 1.7 million. *See Comments of APCC, pp. 11-13.* Based on available data, payphone deployment continues to decrease at an annual rate of approximately 7 percent.

- ◆ **Payments are unduly burdensome.** Unlike other providers of telecommunications, payphone service providers have no rational method available for equitably recovering their universal service payments from end users. If payphone service providers are required to make payments to the Fund, payphone service providers may have to recover such payments through price increases for local coin calls. It would be inequitable and of questionable legality to force those end users who make local calls to bear the burden of payphone service provider payments to federal universal service mechanisms. *See Comments of APCC*, pp. 13-16.

- ◆ **Proposed Tier 1 multi-line business connection assessment should not be applied to payphone service.** Payphone connections do not fit neatly within any of the Commission's proposed categories for connection-based assessments. Payphones are unique among telecommunications services in the manner in which they are used by consumers and how lines are provisioned. Payphones are not provisioned like multi-line business lines and there is no logical reason to assess payphone connections as tier-1 connections. Assessing payphone connections as tier-1 multi-line business connections would result in a several-fold increase in payphone service providers' universal service payments and thereby significantly accelerate the pace of payphone removal.

- ◆ **If required to pay, payphone service providers should be assessed at a reasonable rate.** Payphone service providers should be assessed at a level not higher than that applicable to paging service. Like pagers, payphones are generally used for a more limited connection to the public network than residential or business connections, since the vast majority of payphone calls are outgoing. Also, just as one paging frequency can serve numerous subscribers receiving messages, one payphone can serve many different people making outgoing calls. As with pagers, any payment required for payphone lines should reflect payphone service providers' comparatively small interstate revenues.

- ◆ **Retain *de minimis* exception.** If payphone service providers are required to make universal service payments, a *de minimis* exception should be retained in order to reduce tracking and reporting burdens on small payphone service providers.

- ◆ **Payphone service providers should not be payors.** To help preserve ready access to the telephone network through payphones, the Commission should relieve payphone service providers of the requirement to pay into the Universal Service Fund. Payphone service providers are not "telecommunications carriers" and thus are not mandatory payors under the Act. The Commission relied on a faulty legal analysis when it found that the public interest required that payphone service providers pay into the Fund. *See Comments of APCC*, pp. 16-18. It is unsound public policy to require payphone service providers who already are a part of universal service to make payments into the Fund.